

## REMARKS

### I. Introduction

In response to the Office Action mailed on February 13, 2004, applicants submit the following remarks.

Claims 25, 27-75, 87, and 89-147 are pending in this application. Applicants have amended claims 44, 45, 55, 56, 59-61, 65-75, 87, 92, and 94 to more particularly define the invention. The specification has been amended to further clarify the antecedent basis support of certain claim terms. Applicants respectfully submit that the amendments are fully supported and add no new matter. Claims 26, 76-86 and 88 have been cancelled without prejudice.

Reconsideration of this application in light of the following remarks is hereby respectfully requested.

### II. Summary of the Examiner's Action

Claims 25, 27-43, and 95-143 were withdrawn from consideration as being directed to a non-elected invention.

Claims 46-52 and 65-75 were objected to for having the same scope.

Claims 44-75, 87, 89-94, and 144-147 were rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out

and distinctly claim the subject matter which applicant regards as the invention.

Claims 87, 89-94, and 144-147 were rejected under 35 U.S.C. § 102(b) as being anticipated by Kaster et al. U.S. Patent No. 5,234,447 (hereinafter "Kaster").

Claims 44-75, 87, 89-94, and 144-147 were rejected under 35 U.S.C. § 102(e) as being anticipated by Goldsteen et al. U.S. Patent Nos. 5,976,178 and 6,206,912 (hereinafter "Goldsteen").

### III. Applicants' Reply to the Objection to Claims 46-52 and 65-75

The Examiner objected to claims 46-52 and 65-75 as having the same scope. Claims 46-52 and 65-75 were copied from an application of another. They were added in a Supplemental Amendment And Notification Pursuant To 37 C.F.R. § 1.604(b) Identifying Published Patent Applications From Which Claims Have Been Copied ("Notification"), filed February 26, 2002. In that Notification, applicants noted that language was being omitted from the claims that did not refer to patentably distinct features. These omissions resulted in the presentation of the groups of identical claims identified by the Examiner. Applicants acknowledge the requirement to cancel all but one of the duplicate claims from each of the groups of identical claims if they are allowed. However, applicants respectfully resubmit that all of the

copied claims are fully supported by the original specification and drawings of this application.

IV. Applicants' Reply to the Rejection of Claims 44-75, 87, 89-94, and 144-147 under 35 U.S.C. § 112

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The Examiner rejected claims 44-75, 87, 89-94, and 144-147 under 35 U.S.C. § 112 as being indefinite. The Examiner's rejections are respectfully traversed.

The Examiner asserts that the use of the phrase "cylinder-like" in claims 44-75, 87, and 89-94 renders the claims indefinite because "it is unclear what falls within the claim scope." While applicants respectfully disagree with the Examiner's assertion, applicants have amended claims 44, 45, 55, 56, 59-61, 65-75, 87, 92, and 94 to remove the phrase "cylinder-like." Accordingly, applicants' claims 44-75, 87, and 89-94 are not indefinite.

With regard to claims 144-147, the Examiner contends that "clip segments" and "twistable resilient segments" lack clear antecedent basis in the specification. Applicants have amended the specification to further clarify the antecedent basis support of claims 144-147. Therefore, applicants' claims 144-147 are not indefinite, and the rejection of claims 44-75, 87, 89-94, and 144-147 under 35 U.S.C. § 112 should be withdrawn.

V. Applicants' Reply to the Rejection of  
Claims 87, 89-94, and 144-147  
under 35 U.S.C. § 102(b)

The Examiner rejected claims 87, 89-94, and 144-147 under 35 U.S.C. § 102(b) as being anticipated by Kaster. Specifically, the Examiner contended that "the cylindrical-like body as claimed is met by the connecting unit (46), the twisting joints are the joints in the engaging members (44) adjacent connecting unit (46) that bend to allow the engaging members (44) to twist about the connecting unit" (Office Action, page 4). The Examiner's rejections are respectfully traversed.

Applicants have amended independent claim 87 to more clearly define the invention. Applicants' invention as defined by independent claims 87, 92, and 144 is directed toward a connector used to form a fluid-tight anastomotic connection between two blood vessels via the sidewall of one of the blood vessels. With respect to independent claim 87, the cylindrical portion is expanded. With respect to independent claim 92, the first configuration of the tissue engaging portions form a "vessel piercing tip," and with respect to independent claim 144, the twistable resilient segments interconnect the clip segments.

Kaster relates to a vascular anastomotic stapling apparatus. Staples 12 are formed of 316 stainless steel and include a plurality of interior (43)

wall and exterior (44) wall engaging members operably joined by a connecting unit 46, or band. See column 5, lines 54-61. However, applicants respectfully submit that Kaster does not show each and every feature of applicants' independent claims 87, 92, and 144.

Specifically, Kaster fails to show a configuration change of the staple that is effected by expanding a cylindrical portion. Band 46 of Kaster is formed of stainless steel, and there is no discussion of attempting to expand the stainless steel band. Therefore, Kaster fails to show the configuration change effected by expanding the cylindrical portion feature of applicants' independent claim 87.

Kaster also fails to show a first configuration in which tissue engaging portions form a vessel piercing tip. Kaster states that stapling tool 10 is manipulated to urge staple 12 and blood vessel 51 through a hole 52 in the wall of a second blood vessel. See column 6, lines 57-61. Furthermore, Kaster explains that hole 52 should be an appropriate diameter to accommodate the exterior diameter of vessel 51. See column 6, lines 62-65. In other words, there is a preformed hole of the appropriate diameter in the target vessel for the Kaster device. This is in stark contrast to the vessel piercing tip of applicants' independent claim 92. See, for example, applicants' FIG. 35, which illustrates a

"cone of struts 436'" that "is forced through the wall of coronary artery 20" (page 37, lines 11-12). Kaster does not show a first configuration in which the tissue engaging portions form a vessel piercing tip.

Furthermore, Kaster fails to show "a plurality of twistable resilient segments that interconnect the clip segments," as described by applicants' independent claim 144. The Examiner contends that the engaging members of Kaster twist about the connecting unit. However, Kaster fails to show twistable segments interconnecting the engaging members. The engaging members of Kaster are interconnected by a stainless steel ring, which is not described to have any resilient or twistable properties. In stark contrast, applicants' FIG. 24 illustrates resilient serpentine rings 448 that may be formed to hold struts 436' substantially uniformly out against the inner surface of body tubing all the way around the circumference of the graft. See page 25, lines 10-13. Twistable resilient segments actually interconnect the clip segments in applicants' independent claim 144. This feature is not shown by Kaster.

Because Kaster fails to show, expressly or inherently, each and every feature of applicants claimed invention as defined by independent claims 87, 92, and 144, the rejection of independent claims 87, 92, and 144 should be withdrawn. Furthermore, since claims 89-91,

93-94, and 145-147 depend from independent claims 87, 92, and 144, the rejection of claims 89-91, 93-94, and 145-147 should also be withdrawn. Therefore, applicants respectfully request that the rejection of claims 87, 89-94, and 144-147 be withdrawn.

VI. Applicants' Reply to the Rejection of  
Claims 44-75, 87, 89-94, and 144-147  
under 35 U.S.C. § 102(e)

The Examiner rejected claims 44-75, 87, 89-94, and 144-147 under 35 U.S.C. 102(e) as being anticipated by Goldsteen. This rejection is respectfully traversed.

35 U.S.C. § 102(e) states "[a] person shall be entitled to a patent unless the invention was described in . . . (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent" (emphasis added). MPEP § 2136.04 states that "another" means a different inventive entity and that the "inventive entity is different if not all inventors are the same." Concurrently with the filing of this Reply, applicants are submitting a Declaration Of Daniel J. Sullivan Under 37 C.F.R. § 1.132 stating that the inventive entity of the present application and the Goldsteen patents is the same. Because the inventive entity is the same among this application and the Goldsteen patents, the Goldsteen patents are not "by another" for purposes of 35 U.S.C. § 102(e).

Therefore, applicants respectfully request that the rejection of claims 44-75, 87, 89-94, and 144-147 under 35 U.S.C. § 102(e) be withdrawn.

VII. Conclusion

For at least the foregoing reasons, applicants respectfully submit that claims 44-75, 87, 89-94, and 144-147 are allowable. Therefore, this application is in condition for allowance.

Accordingly, prompt reconsideration and allowance of this application are respectfully requested.

Respectfully submitted,



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Stuart W. Yothers  
Registration No. 53,816  
Agent for Applicants  
FISH & NEAVE  
Customer No. 1473  
1251 Avenue of the Americas  
New York, New York 10020-1105  
(212) 596-9000